

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-cv-329-GKF(SAJ)
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**THE STATE OF OKLAHOMA’S RESPONSE IN OPPOSITION TO
DEFENDANTS’ JOINT MOTION FOR CLARIFICATION OF THE COURT’S
OCTOBER 28, 2008 ORDER [Dkt. No. 1789]**

I. Introduction

On October 28, 2008, this Court granted in part and denied in part Defendants’ Joint Motion to Enforce Scheduling Orders [Dkt. No. 1759]. Defendants’ now seek a “clarification” of that Order. But Defendants do not actually seek clarification; they seek a different result. In effect, Defendants’ Motion for clarification is actually another request for an extension of time, which is in reality asking the Court to reconsider its October 28 Order. The Court’s October 28 Order was clear. It granted Defendants’ experts an extension from October 14, 2008, to December 1, 2008, to submit the majority of their expert reports, but did not disturb the due date for the specific experts and subject matters addressed in the Court’s August 8, 2008 Order [Dkt. No. 1756]. No clarification is needed. And furthermore, even if this Court were to reconsider its Order based on Defendants’ request for “clarification,” Defendants have offered no basis to alter the Court’s Orders setting the December due dates for Defendants’ expert reports. Their Motion to clarify should, therefore, be denied.

II. Argument

The Court's Order of August 8, 2008 [Dkt. No. 1756] granted Defendants a substantial amount of additional time for all of their expert reports as follows:

- October 14, 2008: Due date for all expert reports, including Wayne Grip, except as specifically identified below.
- December 12, 2008: Due date for Dr. Bierman's report and other modeling reports.
- December 15, 2008: Due date for Dr. Michael McGuire's report and other reports on the subjects of drinking water quality and erosion.
- December 19, 2008: Due date for Drs. Sullivan, Horn and Chadwick (initial report) and other reports on the subjects of aquatic ecology and limnology.
- May 30, 2009: Due date for Dr. Chadwick's final report and other final reports on spring sampling.

See Dkt. No. 1756 at 4-5.

In response to several of the State's experts submitting errata pursuant to their Rule 26(e), Defendants' filed a Joint Motion to Enforce Scheduling Orders [Dkt. No. 1759] requesting, among other things, additional time for their expert reports. A hearing was held October 8, 2008, and this Court issued its Order granting in part and denying in part the Defendants' Joint Motion. *See* Dkt. No. 1787. This Court granted Defendants' request for an additional extension of the expert reports due on October 14, 2008. But the Court did not grant an additional extension for the reports that had already been extended to December 2008 and May 2009 by the Court's August 8 Order.

Defendants now come before the Court again, requesting again, a further extension (of six more weeks) for those experts whose reports are due in mid-to-late December. This extension is not warranted, and Defendants have not presented any new information that warrants an additional six weeks for these expert reports. Indeed, at the October 8, 2008 hearing the State presented to the Court a chart, attached here as Exhibit A, which showed the date of the State's expert's errata compared to the date on which the corresponding Defendants' expert report was due based on the extension granted Defendants in the Court's August 8 Order. From this comparison the State explained that Defendants' experts had in excess of two months time to review and consider the errata based on the existing schedule. (In the case of Dr. Chadwick's final report and final report on spring sampling over nine months for review.) Considering these dates, the Court extended the time for expert reports due on October 14 by six weeks, but reasonably determined that further extension of the December and May expert deadlines was not called for. Accordingly, this second request for an additional report extension for these December reports should be denied.

Finally, Defendants have sought to add a new person and a new subject matter to the expert reports due December 12. On page 4 of Defendants' Joint Motion for Clarification [Dkt. No. 1789], Defendants' add in their requested extension date of January 23, 2009 (under the subject matter of "Victor Bierman" and "Modeling"), "and other fate-and-transport experts (including Brian Murphy in part)." This is the first mention by Defendants of "Brian Murphy" and the so-called topic of "fate and transport experts." There was no discussion of such person or topics at the October 8 hearing and there is no reason given by Defendants as to why this new expert and subject matter should be added to those experts and subject matters whose due date is December 12, 2008. Thus, there is no basis for Mr. Murphy's and the other fate and transport

expert reports to be due on a date other than the date for the other unspecified experts, *i.e.*,
December 1.

III. Conclusion

This Court granted Defendants' motion and extended the submission date for the majority of Defendants' expert reports from October 14, 2008, to December 1, 2008. It is clear that those experts whose reports were already due after December 1 have had sufficient time and those due dates should stand as is. Therefore, the relief requested by Defendants should be denied. Further, Defendants' attempt to add a new expert (Murphy) and a new subject matter (fate-and-transport) to the reports due on December 12 should be also be denied.

Respectfully Submitted,

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PLAINTIFF'S EXPERT (Errata Date)	DEFENDANTS' EXPERT	DEFENDANTS' REPORT DATE
Engel (9/4/08)	Bierman Connolly	December 12, 2008 December 19, 2008
Wells (8/26/08 & 9/30/08)	Bierman Connolly	December 12, 2008 December 19, 2008
Stevenson (8/5/08 & 9/30/08)	Chadwick	December 19, 2008 May 30, 2009
Olsen (8/25/08 & 9/30/08)	Connolly?	December 19, 2008
Fisher (9/4/08 & 9/18/08)	Sullivan?	December 19, 2008
Welch (7/24/08 & 8/13/08)	Horne	December 19, 2008
Cooke (8/1/08 & 9/30/08)	Horne McGuire	December 19, 2008 December 15, 2008

EXHIBIT A